

Mine Safety and Health Administration

Office of Assessments

Introduction

- Increase Understanding of MSHA's Assessment Program
- Purpose of Civil Penalty

Topics of Discussion

- Four Groups of the Office
- Six Assessment Criteria
- Three Types of Assessments
- Helpful Hints

Four Groups of the Office

- Assessment Center
- Civil Penalty Compliance Office
- Special Assessments Group
- Policy and Systems Group

**Director,
Office of
Assessments**

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graph TD; Director["Director,  
Office of  
Assessments"] --- SA["Special Assessments Group"]; Director --- CP["Civil Penalty Compliance Office"]; Director --- PS["Policy and Systems Group"]; Director --- AC["Assessments Center  
Wilkes-Barre, PA"]; CP --- SCG["Special Collections Group"]; CP --- CG["Compliance Group"]; AC --- RAG["Research and Analysis Group  
Wilkes-Barre, PA"]; AC --- PRG["Processing and Review Group  
Wilkes-Barre, PA"];
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Special Assessments Group

Civil Penalty Compliance Office

Policy and Systems Group

**Assessments Center
Wilkes-Barre, PA**

Special Collections Group

Compliance Group

**Research and Analysis Group
Wilkes-Barre, PA**

**Processing and Review Group
Wilkes-Barre, PA**

Wilkes-Barre Assessment Center

- Process Violations into Cases
- Assemble Case Files for Civil Penalty Compliance Office
- Conduct Research/Analysis

Civil Penalty Compliance Office

- Track/Maintain Status of Civil Penalty Cases
- Prepare Cases for Litigation
- Process Payments
- Collect Delinquent Penalties

Special Assessments Group

- Specially Assess Violations

Policy and Systems Group

- Develop/Maintain Assessment Policy
- Maintain Assessment Data Base Management System
- Coordinate Assessment Information and Activities
- Resolve Discrepancies/Disputes
- Information Requests (FOIA)

Civil Penalty Can Be!

\$55 - \$55,000

Six Assessment Criteria

- History of Previous Violations
- Size of Operator's Business
- Negligence of the Operator
- Gravity of the Violation
- Good Faith
- Ability to Continue in Business

History

- Paid or Final Order Violations
- 24-month Period
- Production Operators - VPID
- Independent Contractors - Avg. Per Year
- Ownership Changes

History - Mine Operators

<u>Violations Per Inspection Day</u>	<u>Penalty Points</u>
0 - 0.3	0
Over 0.3 - 0.5.....	2
Over 0.5 - 0.7.....	4
Over 0.7 - 0.9.....	6
Over 0.9 - 1.1.....	8
Over 1.1 - 1.3.....	10
Over 1.3 - 1.5.....	12
Over 1.5 - 1.7.....	14
Over 1.7 - 1.9.....	16
Over 1.9 - 2.1.....	18
Over 2.1.....	20

History - Independent Contractors

<u>Number of Violations</u>	<u>Penalty Points</u>
1 - 5	0
6 - 10.....	2
11 - 15	4
16 - 20	6
21 - 25	8
26 - 30	10
31 - 35	12
36 - 40	14
41 - 45	16
46 - 50	18
Over 50	20

Excessive History of Violations

- Greater Than 2.1 Violations per Inspection Day (VPID) for Operators (20 Penalty Points)
- More Than 50 Violations per Year for Independent Contractors (20 Penalty Points)
- Does Not Apply to Mines With 10 or Fewer Violations
- Only Applies to 104(a) Non-S&S Timely Abated Citations

Size

- Tonnage/Hours Worked
- Production Operators/Independent Contractors
- Sources of Data
- Previous Calendar Year

Size of Coal Mine

<u>Annual Tonnage of Mine</u>	<u>Penalty Points</u>
0 - 15,000	0
Over 15,000 - 30,000	1
Over 30,000 - 50,000	2
Over 50,000 - 100,000	3
Over 100,000 - 200,000	4
Over 200,000 - 300,000	5
Over 300,000 - 500,000	6
Over 500,000 - 800,000	7
Over 800,000 - 1.1 million	8
Over 1.1 million - 2 million	9
Over 2 million	10



Size of Controlling Entity - Coal

<u>Annual Tonnage</u>	<u>Penalty Points</u>
0 - 100,000	0
Over 100,000 - 700,000	1
Over 700,000 - 1.5 million	3
Over 5 million - 10 million	4
Over 10 million	5

Size of Metal/Nonmetal Mine

<u>Annual Hours Worked at Mine</u>	<u>Penalty Points</u>
0 - 10,000	0
Over 10,000 - 20,000	1
Over 20,000 - 30,000	2
Over 30,000 - 60,000	3
Over 60,000 - 100,000	4
Over 100,000 - 200,000	5
Over 200,000 - 300,000	6
Over 300,000 - 500,000	7
Over 500,000 - 700,000	8
Over 700,000 - 1 million	9
Over 1 million	10



Size of Controlling Entity - Metal/Nonmetal

<u>Annual Hours Worked</u>	<u>Penalty Points</u>
0 - 60,000	0
Over 60,000 - 400,000	1
Over 400,000 - 900,000	2
Over 900,000 - 3 million	3
Over 3 million - 6 million	4
Over 6 million	5

Size of Independent Contractor

<u>Annual Hours Worked at All Mines</u>	<u>Penalty Points</u>
0 - 10,000	0
Over 10,000 - 20,000	1
Over 20,000 - 30,000	2
Over 30,000 - 60,000	3
Over 60,000 - 100,000	4
Over 100,000 - 200,000	5
Over 200,000 - 300,000	6
Over 300,000 - 500,000	7
Over 500,000 - 700,000	8
Over 700,000 - 1 million	9
Over 1 million	10

Negligence and Gravity

- Evaluated by Issuing Inspector
- Indicated on Citation/Order Form

Negligence

<u>Categories</u>	<u>Penalty Points</u>
No Negligence	0
Low Negligence.	10
Moderate Negligence	15
High Negligence	20
Reckless Disregard.	25

Gravity - Likelihood

<u>Likelihood of Occurrence</u>	<u>Penalty Points</u>
No Likelihood	0
Unlikely.....	2
Reasonably Likely	5
Highly Likely	7
Occurred.....	10

Gravity - Severity

<u>Severity of injury or illness if the event occurred or were to occur</u>	<u>Penalty Points</u>
No Lost Work Days	0
Lost Work Days or Restricted Duty ..	3
Permanently Disabling	7
Fatal	10

Gravity - Persons Affected

<u>Number of persons potentially affected if the event occurred or were to occur</u>	<u>Penalty Points</u>
0	0
1	1
2	2
3	4
4 - 5	6
6 - 9	8
More than 9	10

[illegible]

10. Gravity:

B. Injury or Illness could reasonably be expected to be:

No Lost Workdays	<input type="checkbox"/>	Lost Workdays or Restricted Duty	<input checked="" type="checkbox"/>	Permanently Disabling
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11. Negligence (check one)

A. None	<input type="checkbox"/>	B. Low	<input type="checkbox"/>	C. Moderate	<input checked="" type="checkbox"/>	D. High	<input type="checkbox"/>	E. Reckless Disregard	<input type="checkbox"/>
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14. Initial Action						E. Citation/ Order number							F. Dated	M
A. Citation	<input type="checkbox"/>	B. Order	<input type="checkbox"/>	C. Safeguard	<input type="checkbox"/>	D. Written Notice	<input type="checkbox"/>							

16. Termination Due	A. Date	Mo	Da	Yr	B. Time (24					
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Good Faith

- Evaluated by Inspector
- Based on Timely Abatement of Violation
- Effects on Penalty Amounts
 - 30% reduction
 - additional 10 points
 - no single penalty

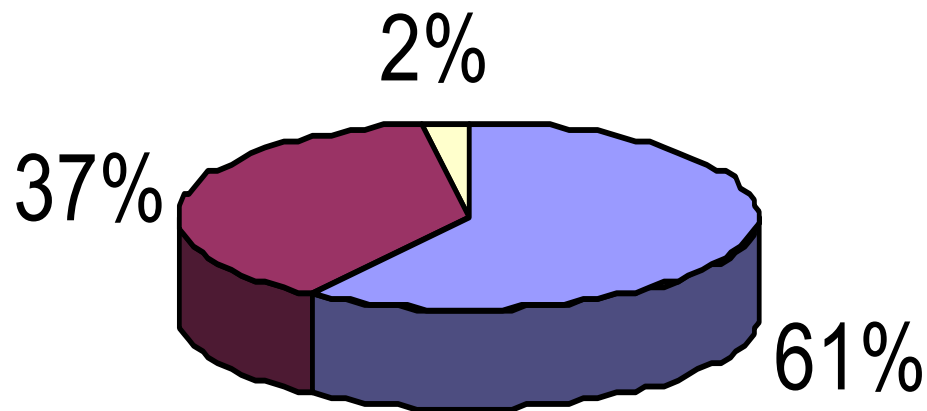
Ability to Continue in Business

- No Effect Initially Presumed
- May Affect Penalty Amounts
- Procedures for Consideration
 - must be within 30 days of assessment
 - submit written request to District
 - include financial statements

Three Types of Assessments

- Single Penalty
- Regular Formula
- Special

Assessed Violations by Type of Assessment



- Single Penalty
- Regular Assessment
- Special Assessment

Single Penalty Assessment

- Computer-generated
- Flat \$55
- 104(a) non-S&S Citations That Are Timely Abated
- No Excessive History of Violations

Note:

**Timely Abated Means - -
“Terminated Within the Time Set
by the Issuing Inspector”**

Regular Assessment

- Computer-generated
- Orders and 104(d) Citations
- 104(a) S&S Citations
- 104(a) non-S&S Citations Not Qualifying for Single Penalty
- If Timely Abated - 30% Reduction in Penalty
- If Not Timely Abated - 10 Additional Penalty Points
- Range \$66 - \$55,000

Penalty Conversion Table

<u>Points</u>	<u>Penalty (\$)</u>	<u>Points</u>	<u>Penalty(\$)</u>
20 or fewer	66	81.	10,450
30.	149	82.	11,550
40.	297	83.	12,650
50.	796	84.	13,750
60.	2,796	85.	14,850
70.	5,500	86.	16,500
80.	9,350	87.	18,700
		88.	20,900
		89.	23,100
		90.	25,300
		91.	27,500
		92.	30,250
		93.	33,000
		94.	35,750
		95.	38,500
		96.	41,250
		97.	44,000
		98.	46,750
		99.	49,500
		100	55,000

Special Assessment

- No Fixed Formula
- Serious Violations
- Use Six Assessment Criteria

**MSHA Districts Conduct Reviews of
Certain Violations for Special Assessment!**

Violations Considered for Special Assessment

- fatalities and serious injuries
- unwarrantable failure
- operating in defiance of a closure order
- denial of right of entry
- individuals liable under Section 110c of the Mine Act
- imminent danger
- acts of discrimination under Section 105c of the Mine Act
- extraordinarily high negligence, gravity, or other unique aggravating

Unique Aggravating Circumstances Means

- Violations That Do Not Fall Into Any of the Other Special Assessment Categories
- Examples: Multiple Violations of Health Standards, Part 48, Part 50

Special Assessors Review

- Citation/Order
- Special Assessment Review Form
- Inspector's Notes
- Conference Notes
- Accident Report/Memorandum/Data Sheet
- Sketches/Photographs
- Relevant Portions of Plans

Factors Affecting Penalty Amounts

- Type of Citation/Order Issued
- Size of the Operation
- History of Previous Violations
- Inspector's Evaluation
- Type of Assessment Requested

Examples for Discussion

Example: Guard Missing on Conveyor Belt Drive



- Belt Not Running
- No One Working in Area
- Violation Immediately Corrected
- 104(a) Non-S&S Citation, Timely Abated
- Single Penalty Assessment
- Without Timely Abatement, Regular Assessment

Example: Guard Missing on Conveyor Belt Drive



- Belt Not Running
- No One Working in Area
- Violation Immediately Corrected
- 104(a) Non-S&S Citation, Timely Abated
- No Excessive History of Violations
- Single Penalty Assessment

Example: Guard Missing on Conveyor Belt Drive



- Belt Not Running
- No One Working in Area
- 104(a) Non-S&S Citation
- Without Timely Abatement (104b Order) = Regular Assessment

Example: Guard Missing on Conveyor Belt Drive



- Belt Not Running
- No One Working in Area
- 104(a) Non-S&S Citation, Timely Abated
- Excessive History of Violations

Example 1 - 104(a) Non - S&S Citation

<u>Criterion</u>	<u>Timely Abated Penalty Points</u>	<u>Not Timely Abated Penalty Points</u>	<u>Timely Abated But With Excessive History</u>
Mine Size	5	5	5
Co. Size	3	3	3
History	10	10	20
Likelihood	2	2	2
Severity	7	7	7
# Persons	1	1	1
Negligence	15	15	15
Good Faith	<u>0</u>	<u>10</u>	<u>0</u>
Total	NA	53	53
Penalty	\$55	\$1,247	\$1,247
30% Red.	NA	None	-\$375
Final Penalty	\$55	\$1,247	\$872

Example: Guard Missing on Conveyor Belt Drive

- Belt Running
- Employee Shoveling Beneath Belt Drive
- 104(a) S&S Citation, Timely Abated
- Regular Assessment, 30% Good Faith Reduction



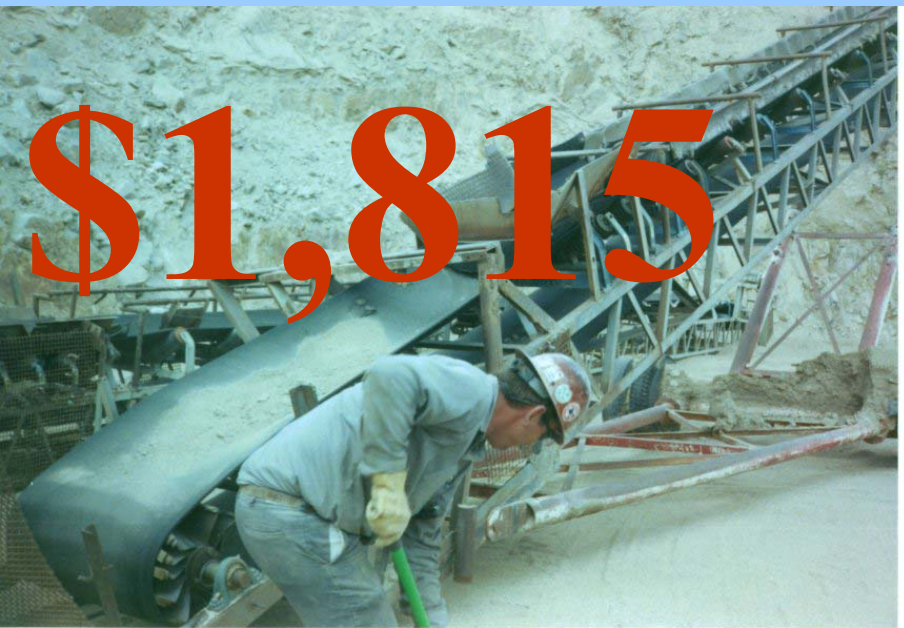
Example: Guard Missing on Conveyor Belt Drive

- Belt Running
- Employee Shoveling Beneath Belt Drive
- 104(a) S&S Citation, Timely Abated
- Regular Assessment, 30% Good Faith Reduction



Example: Guard Missing on Conveyor Belt Drive

- Belt Running
- Employee Shoveling Beneath Belt Drive
- 104(a) S&S Citation
- Without Timely Abatement (104b Order) = Regular Assessment; No 30% Reduction; Additional 10 Penalty Points



Example 2 - 104(a) - S&S Citation Regular Assessment

<u>Criterion</u>	<u>Timely Abated Penalty Points</u>	<u>Not Timely Abated Penalty Points</u>
Mine Size	5	5
Co. Size	3	3
History	10	10
Likelihood	5	5
Severity	7	7
# Persons	1	1
Negligence	15	15
Good Faith	<u>0</u>	<u>10</u>
Total	46	56
Penalty	\$453	\$1,815
30% Red.	\$136	None
Final Penalty	\$317	\$1,815

Average Regular Assessments

- With 30% Reduction - \$255
- Without 30% Reduction - \$587

Example: Guard Missing on Conveyor Belt Drive



- Belt Running
- Employee Shoveling
- Foreman Present,
Directing Work
- 104(d) Unwarrantable
Failure Citation/Order
- Regular or Special
Assessment
- Possible 110 Action

Example: Guard Missing on Conveyor Belt Drive



- Belt Running
- Employee Shoveling
- Foreman Present, Directing Work
- 104(d) Unwarrantable Failure Citation
- Timely Abatement
- Regular Assessment
- Possible 110 Action

Example: Guard Missing on Conveyor Belt Drive

- Belt Running
- Employee Shoveling
- Foreman Present,
Directing Work
- 104(d) Unwarrantable
Failure Order
- Regular Assessment
- Possible 110 Action



Example 3 - 104(d) Citation/Order Regular Assessment

<u>Criterion</u>	Citation	Citation	Order
	Timely Abated	Not Timely Abated	
	<u>Penalty Points</u>	<u>Penalty Points</u>	<u>Penalty Points</u>
Mine Size	5	5	5
Co. Size	3	3	3
History	10	10	20
Likelihood	5	5	5
Severity	7	7	7
# Persons	1	1	1
Negligence	20	20	20
Good Faith	<u>0</u>	<u>10</u>	<u>NA</u>
Total	51	61	51
Penalty	\$936	\$3,098	\$936
30% Red.	-\$281	None	NA
Final Penalty	\$655	\$3,098	\$936

Example: Guard Missing on Conveyor Belt Drive



- Belt Running
- Employee Shoveling
- Foreman Present, Directing Work
- 104(d) Unwarrantable Failure Citation or Order
- Special Assessment
- Possible 110 Action

Example: Guard Missing on Conveyor Belt Drive



- Belt Running
- Employee Shoveling
- Foreman Present, Directing Work
- 104(d) Unwarrantable Failure Citation or Order
- Special Assessment
- Possible 110 Action

Average Special Assessments

- Non-accident-related - \$1,500
- Accident-related - \$31,000
- Director, Officer, Agent - \$957
- Miner Smoking - \$181
- Discrimination - \$1,813

Points to Remember

- Inspections Are Mandatory by Law
- Violations Must Be Cited
- Cited Violations Receive a Penalty
- Purpose of the Penalty is to Encourage Safety and Health

Helpful Hints!

Helpful Hints

- Maintain Active Safety and Health Program
- Maintain Low Violation Average
- Timely Abate Any Violations
- Pay Penalties On Time
- Take Advantage of Opportunities to Influence Outcome of Citations/Orders

Pre-assessment Opportunities



- Travel with Inspector
- Participate in Close-out Conference & Request a Safety & Health Conference when Needed
- Notice of Contest/Application for Review

Travel with the Inspector/ Close-out Conference

- Travel with Inspector to see First-Hand the Violations
- Discuss Conditions at the end of the Inspection
- Closeout is an Informal Meeting with Inspector
- First Opportunity for Input
- Notification of Conference Rights

Safety & Health Conference

- Meeting with District Manager
- Operator or Miners' Representative May Request
- Request Within 10 Days of Notification of Rights
- Request Through District Manager

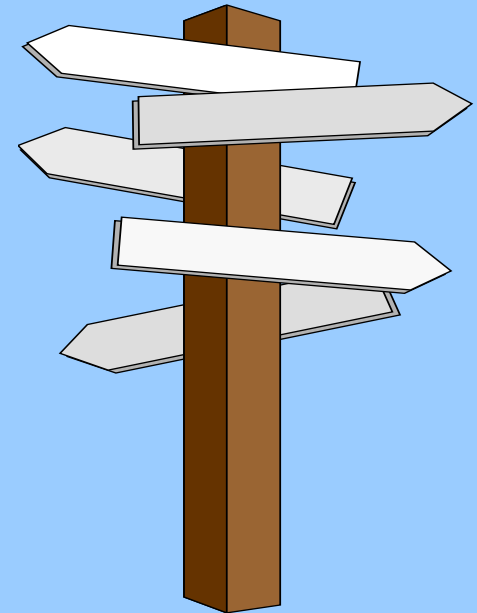


Notice of Contest/ Application for Review

- Legal Proceeding
- Operator, Miners' Representative,
or Miner May File
- File Within 30 Days of
Citation/Order Issue
- File in Writing With Commission
- Does Not Affect Enforcement
Process

Post-assessment Opportunities

- Financial Review
- Civil Penalty Contest
- Appeals



Financial Review

- Operator May Request
- Request Within 30 Days of Receipt of Proposed Assessment
- Request in Writing to District Manager
- Include Financial Statements
- Stays the 30-Day Pay/Contest Requirement
- Penalty Reduction May Be Granted or Denied

Civil Penalty Contest



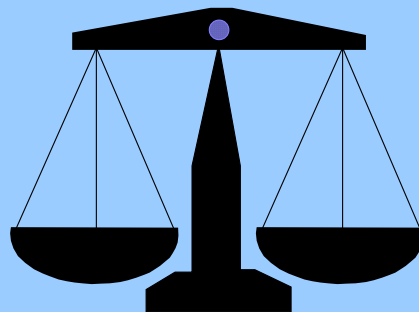
- Legal Proceeding
- Operator May File
- File in Writing to MSHA Civil Penalty Compliance Office
- Settle or Go to Trial
- Penalty Decided by Administrative Law Judge

Appeal ALJ Decision

- Operator or MSHA May Appeal
- File Petition for Discretionary Review
- File Within 30 Days of ALJ Decision
- File With the Federal Mine Safety and Health Review Commission
- May be Granted or Denied
- Commission Hears/Decides Case

Further Options

- Appeal to U.S. Court of Appeals
- Appeal to U.S. Supreme Court



Delinquent Debt Collections

- MSHA Collectors
- Treasury
- Justice

SBREFA

- Small Business Regulatory Enforcement Fairness Act
- 1-888-REG-FAIR (1-800-734-3247)
- 500 W. Madison Street, Suite 1240,
Chicago, IL 60661

***Questions and Comments Are Welcomed By The
Office of Assessments At Any Time!***

**You Can Call Steve Webber (Director) or Bob
Painter at (703) 235-1484.**

Or, You Can E-Mail Us at:

swebber@msha.gov rpainter@msha.gov

**Also, you may want to check out MSHA's Web
Site at www.msha.gov!**

Thank You!

